

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

8 UNITED STATES OF AMERICA,) 2:06-cr-00367-HDM-PAL
9 Plaintiff,)
10 vs.) ORDER
11 ELLIOTT DAUGHERTY,)
12 Defendant.)

Before the court is the defendant's "Motion for Relief and or Judgment" (#83). The government has opposed defendant's motion (#84). Defendant has not filed a reply, and the time for doing so has expired.

Defendant seeks relief under 18 U.S.C. § 3559(c)(7) and U.S.S.G. § 4B1.1 based on a claim that certain of his prior felonies have been retroactively reduced to misdemeanors by operation of California Proposition 47.

Defendant has not established that he is entitled to relief under § 3559(c)(7).¹ First, he was not sentenced to a mandatory

25 ¹Section 3559(c)(7) provides: If the conviction for a serious violent
26 felony or serious drug offense that was a basis for sentencing under this
27 subsection is found, pursuant to any appropriate State or Federal procedure,
28 to be unconstitutional or is vitiated on the explicit basis of innocence,
 or if the convicted person is pardoned on the explicit basis of innocence,
 the person serving a sentence imposed under this subsection shall be
 resentenced to any sentence that was available at the time of the original
 sentencing.

1 term of life imprisonment pursuant to 18 U.S.C. § 3559(c) and thus
2 is not entitled to be resentenced under § 3559(c)(7). See *United*
3 *States v. Sullivan*, 2005 WL 2090236, at *1 (11th Cir. 2005)
4 (unpublished disposition). Second, even if § 3559(c)(7) were
5 applicable to his case, defendant has not established that his
6 prior convictions have been declared unconstitutional or vitiated
7 explicitly on the basis of innocence, or that he has been pardoned
8 on the explicit basis of innocence.

9 Nor has defendant established any basis for reconsidering his
10 career offender status under U.S.S.G. § 4B1.1, even assuming the
11 court has the authority to do so. Proposition 47 did not impact
12 defendant's prior convictions under California Penal Code § 459
13 listed in paragraphs 30 and 31 of the Presentence Report. See
14 Proposition 47, 2014 Cal. Legis. Serv. Prop. 47; Doc. #69 (Court's
15 Order Dated Mar. 16, 2009, at 3-6); Doc. #83 (Mot. 3-4).

16 In accordance with the foregoing, defendant's "Motion for
17 Relief and or Judgment" (#83) is **DENIED**.

18 **IT IS SO ORDERED.**

19 DATED: This 10th day of April, 2015.

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UNITED STATES DISTRICT JUDGE
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